

THE HONORABLE RICARDO S. MARTINEZ

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

HILARIO VALDEZ and CORAZON
VALDEZ, husband and wife,

Plaintiffs,

v.

NATIONAL RAILROAD PASSENGER
CORPORATION a/k/a AMTRAK, a
Washington D.C. Corporation,

Defendant.

Case No. 2:18-CV-00190-RSM

**DEFENDANT NATIONAL
RAILROAD PASSENGER
CORPORATION D/B/A AMTRAK'S
ANSWER & AFFIRMATIVE
DEFENSES TO PLAINTIFFS'
COMPLAINT**

JURY DEMAND

Defendant National Railroad Passenger Corporation d/b/a Amtrak ("Amtrak") responds
as follows to Plaintiffs' Complaint ("Complaint"):

ANSWER

**I. PLAINTIFFS' IDENTIFICATION OF PARTIES AND STATEMENT OF
JURISDICTION AND VENUE**

1.1 Amtrak lacks information sufficient to form a belief as to the truth or falsity of the
allegations of Paragraph 1.1 of the Complaint and therefore denies the same.

1.2 Amtrak admits the allegations of Paragraph 1.2 of the Complaint.

1.3 Amtrak admits that the passenger train trip at issue in this litigation originated in
Seattle, Washington and that its intended destination was Portland, Oregon. Except as expressly
admitted herein, Amtrak denies the allegations of Paragraph 1.3 of the Complaint.

1 1.4 Amtrak admits that the Amtrak Cascades train service in the Pacific Northwest
2 uses Talgo passenger cars. Except as expressly admitted herein, Amtrak denies the allegations
3 of Paragraph 1.4 of the Complaint.

4 1.5 Amtrak lacks information sufficient to form a belief as to the truth or falsity of the
5 allegations of Paragraph 1.5 of the Complaint and therefore denies the same.

6 1.6 Amtrak states that the allegations regarding jurisdiction and venue in Paragraph
7 1.6 are moot given the removal of this action to the United States District Court for the Western
8 District of Washington, where jurisdiction and venue are proper.

9 II. PLAINTIFFS' ALLEGATIONS REGARDING AGENCY

10 2.1 Amtrak admits that it is a common carrier of its passengers. Except as expressly
11 admitted herein, Amtrak denies the allegations of Paragraph 2.1 of the Complaint.

12 2.2 Amtrak lacks information sufficient to form a belief as to the truth or falsity of the
13 allegations of Paragraph 2.2 of the Complaint and therefore denies the same.

14 III. ALLEGED ACCIDENT FACTS

15 3.1 Amtrak admits Plaintiff Hilario Valdez was aboard Amtrak Cascades Train 501
16 at the time of the December 18, 2017 derailment. Except as expressly admitted herein, Amtrak
17 denies the allegations of Paragraph 3.1 of the Complaint.

18 3.2 Amtrak denies the allegations of Paragraph 3.2 of the Complaint.

19 3.3 Amtrak admits that at approximately 7:33 a.m. on December 18, 2017, Amtrak
20 Cascades Train 501 was traveling on the Point Defiance Bypass section of the Lakewood
21 Subdivision, a section of trackage over which it has operating rights. Except as expressly
22 admitted herein, Amtrak denies the allegations of Paragraph 3.3 of the Complaint.

23 3.4 Amtrak denies the allegations of Paragraph 3.4 of the Complaint.

24 3.5 Amtrak admits that on December 18, 2017, the speed restriction for Amtrak
25 Cascades Train 501 over the section of trackage where the December 18, 2017 derailment
26 occurred is 30 mph. Except as expressly admitted herein, Amtrak denies the allegations of
27 Paragraph 3.5 of the Complaint.

1 3.6 Amtrak denies the allegations of Paragraph 3.6 of the Complaint, except that it
2 admits that Amtrak Cascades Train 501 was traveling in excess of the allowable speed at some
3 point prior to the derailment.

4 3.7 Amtrak lacks information sufficient to form a belief as to the truth or falsity of the
5 allegations of Paragraph 3.7 of the Complaint and therefore denies the same.

6 3.8 Amtrak denies the allegations of Paragraph 3.8 of the Complaint.

7 3.9 Amtrak denies the allegations of Paragraph 3.9 of the Complaint.

8 IV. DEFENDANT'S ALLEGED TORTIOUS CONDUCT

9 4.1 Amtrak repeats and re-alleges its responses to Paragraphs 1.1 through 3.9,
10 inclusive, as though fully set forth herein and incorporates the same by reference.

11 4.2 Amtrak denies the allegations of Paragraph 4.2 of the Complaint, except that in
12 this civil action, Amtrak will not contest liability for compensatory damages proximately caused
13 by the derailment of Train 501 on December 18, 2017.

14 4.3 Amtrak denies the allegations of Paragraph 4.3 of the Complaint, except that in
15 this civil action, Amtrak will not contest liability for compensatory damages proximately caused
16 by the derailment of Train 501 on December 18, 2017.

17 4.4 Amtrak denies the allegations of Paragraph 4.4 of the Complaint, except that in
18 this civil action, Amtrak will not contest liability for compensatory damages proximately caused
19 by the derailment of Train 501 on December 18, 2017.

20 V. ALLEGED INJURIES

21 5.1 Amtrak lacks information sufficient to form a belief as to the truth or falsity of the
22 allegations of Paragraph 5.1 of the Complaint and therefore denies the same.

23 VI. ALLEGED DAMAGES

24 6.1 Amtrak denies the allegations of Paragraph 6.1 of the Complaint, except that in
25 this civil action, Amtrak will not contest liability for compensatory damages proximately caused
26 by the derailment of Train 501 on December 18, 2017.

1 6.2 Amtrak lacks information sufficient to form a belief as to the truth or falsity of the
2 allegations of Paragraph 6.2 of the Complaint and therefore denies the same.

3 VII. ALLEGED AGE AND LIFE EXPECTANCY

4 7.1 Amtrak lacks information sufficient to form a belief as to the truth or falsity of the
5 allegations of Paragraph 7.1 of the Complaint and therefore denies the same.

6 VIII. PLAINTIFFS' REQUEST FOR RELIEF

7 Amtrak denies that Plaintiffs are entitled to the relief sought in the Complaint.

8 **AFFIRMATIVE DEFENSES**

9 By way of further answer and affirmative defenses to Plaintiffs' Complaint, Amtrak
10 alleges as follows:

11 1. To the extent Plaintiffs have failed to mitigate their damages, any recovery should
12 be reduced accordingly.

13 2. Any claim for punitive damages is barred by 49 U.S.C. § 28103.

14 3. Any claim for punitive damages is barred by the United States Constitution,
15 including, *inter alia*, the Due Process, Equal Protection and Excessive Fines Clauses, as well as
16 the Washington Constitution and applicable statutory provisions.

17 4. Plaintiffs' award, if any, is controlled and limited by the applicable provisions of
18 49 U.S.C. § 28103.

19 5. To the extent certain expenses incurred by Plaintiffs arising from the incident in
20 question have been paid by Amtrak, any recovery by Plaintiffs should be reduced to the extent
21 of such payments pursuant to the doctrine of accord and satisfaction.

22 6. Amtrak reserves the right to amend this answer and affirmative defenses to allege
23 additional defenses, add additional parties, and bring third-party claims, as may be identified
24 during the course of discovery and investigation.

PRAYER FOR RELIEF

WHEREFORE, having fully answered Plaintiffs' Complaint and set forth its affirmative defenses Amtrak prays as follows:

1. That Amtrak be granted its costs, including reasonable attorneys' fees, incurred in defending this action; and

2. That the Court grant Amtrak such other relief as it deems just and equitable under the circumstances.

DATED this 5th day of March 2018.

LANE POWELL PC

By: /s/ Tim D. Wackerbarth

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JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), Defendant National Railroad Passenger Company d/b/a Amtrak herein requests a jury trial by a jury of twelve in the above-referenced matter.

DATED this 5th day of March 2018.

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CERTIFICATE OF SERVICE

Pursuant to RCW 9A.72.085, the undersigned certifies under penalty of perjury under the laws of the State of Washington, that on the 5th day of March, 2018, the document attached hereto was presented to the Clerk of the Court for filing and uploading to the CM/ECF system. In accordance with their ECF registration agreement and the Court's rules, the Clerk of the Court will send e-mail notification of such filing to the following persons:

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and I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants:

Executed on the 5th day of March, 2018, at Seattle, Washington.


Sabrina Mitchell